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**PATENT APPLICATION**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Stephen Peter FITZGERALD et al.

Group Art Unit: 1743

Application No.: 09/389,082

Examiner: L. Cross

Filed: September 2, 1999

Docket No.: 104161

For: IMPROVEMENTS RELATING TO ASSAY DEVICES

**REQUEST FOR RECONSIDERATION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In reply to the December 22, 2003 Office Action, reconsideration of the rejection is respectfully requested in light of the following remarks.

Claims 1-3, 6-13 and 15-21 are pending.

The Office Action rejects claims 1-3, 6-13 and 15-21 under 35 U.S.C. §103(a) over European Patent No. 569753 to Westhall (hereinafter "Westhall") in view of U.S. Patent No. 4,828,386 to Matkovich et al. (hereinafter "Matkovich"). This rejection is respectfully traversed.

Westhall in combination with Matkovich fails to teach or suggest an assay assembly (or a method of constructing an assay assembly) having a retaining means comprising at least one hot or cold formed projection on the inner surface of the side wall, as set forth in independent claims 1 and 17.

The Office Action admits that Westhall fails to teach or suggest the above-mentioned feature. However, the Office Action, at page 3, asserts that Matkovich, in Fig. 3b, teaches a

well having projections (72) on the inner surface of its wall. The Office Action further asserts that it would have been obvious to one of ordinary skill in the art to incorporate projections taught by Matkovich into the device of Westhall.

Applicants respectfully disagree with the Office Action's assertion, as well as its interpretation and application of the teachings of Matkovich and Westhall to claims 1-3, 6-13 and 15-21. Applicants respectfully submit that, contrary to the Office Action's assertion, one of ordinary skill in the art would not have attempted to modify Westhall to incorporate retaining notches, as discussed below.

The storage device 1 disclosed in Westhall is used for storing the plates 3, 4 to enable the plates to be removed by the device shown in Fig. 3 and transferred to other containers for processing. In Westhall, it is essential that the plates 3, 4 are not retained within the tubular element 2 since otherwise they could not be automatically removed/extracted by the device in Fig. 3.

Thus, Applicants respectfully submit that it would not be obvious to one of ordinary skill in the art to modify Westhall to incorporate retaining notches or projections taught by Matkovich. In fact, modifying the storage device 1 of Westhall as suggested by the Office Action to incorporate retaining notches or projections taught by Matkovich, would render the storage device 1 of Westhall unworkable since the projections would prevent the plates within the tubular element from being automatically removed and processed by the Westhall device.

Regarding claim 9, the Office Action asserts that Westhall, in Fig. 1, discloses that the base of the tubular receiving element 2 is square. Applicants respectfully disagree with this assertion.

Westhall, in Fig. 1, shows a cross-sectional view of the tubular receiving element 2. Contrary to the Office Action's assertion, it is impossible to determine, based on Fig. 1,

whether the tubular member 2 in Westhall is circular or square shaped. Thus, Applicants respectfully submit that Westhall and Matkovich, alone or in combination, fail to disclose or suggest a storage well having a square base, as set forth in dependent claim 9.

For at least the reasons discussed above, Applicants respectfully submit that independent claims 1 and 17 are patentable over the applied art. Claims 2, 3, 6-13, 15, 16 and 18-21, which depend from claims 1 and 7, respectively, also are patentable over the applied art for at least the reasons discussed above.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-3, 6-13 and 15-21 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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JAO:GPS/hs

Date: March 22, 2004

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